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NANCY SWEENEY
CLERK DISTRICT COURT
FILED BY **C. Potuzan**
DEPUTY

2009 MAR 31 P-3: 59

Attorneys for the Securities Commissioner

IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF MONTANA
LEWIS AND CLARK COUNTY

STATE AUDITOR, EX OFFICIO SECURITIES)
COMMISSIONER FOR MONTANA,)
Petitioner,)

Cause No. CDV-2009-157

vs.)

MOTION TO APPOINT A RECEIVER

KEITH KOVICK, individually and in his capacity)
as agent for the named respondent companies;)
ROBERT CONGDON, individually and in his)
capacity as agent for the named respondent)
companies; DAN WOLSKY, individually and in)
his capacity as agent for the named respondent)
companies; DAN KLEMANN, individually and in)
his capacity as agent for the named respondent)
companies;)

CORNERSTONE FINANCIAL CORPORATION)
13 2nd Ave, Polson, MT, 59860)

D & D MANAGEMENT and PROPERTY)
DEVELOPMENT, INC.)
466 Misty Vale Lane, Corvallis, MT 59828)

Respondents.)

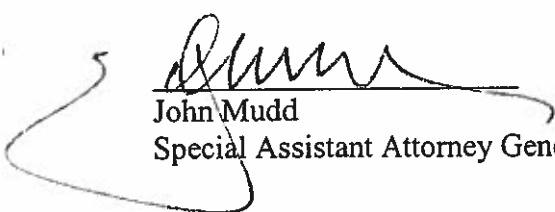
The Montana State Auditor, acting in her capacity as Securities Commissioner (hereafter
"Commissioner"), by and through John Mudd and Roberta Cross Guns, Special Assistant

Attorneys General, respectfully moves this Court to APPOINT a receiver in this case pursuant to Section 30-10-305, MCA, to take and keep possession of property, receive rents, receive other income from the property, collect debts, make transfers, and generally do such acts respecting the property as the Court may authorize. Opposing counsels have been contacted regarding this motion. Counsels for Keith Kovick, D & D Management, Dan Wolsky and Dan Klemann have all indicated they have no objection to this motion. Counsel for Robert Congdon and Cornerstone Financial indicated he objects to the motion, but failed to state any grounds for his objection.


WHEREFORE, the Commissioner seeks the following relief:

That this Court issue an ORDER appointing a receiver and that the receiver be Judge Loren Tucker of the 5th Judicial District of Montana. Judge Tucker has indicated that he would be willing to accept the appointment. Further, the Commissioner recommends the appointment of Judge Tucker as Receiver, on the terms set forth in this motion.

DATED this 3rd day of March 2009.



John Mudd
Special Assistant Attorney General



Roberta Cross Guns
Special Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify the foregoing Motion was served by US mail, first-class postage paid, to the following:

Mr. Doug James
MOULTON BELLINGHAM PC
PO Box 2559
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NANCY SWEENEY
CLERK DISTRICT COURT
FILED BY **C. Poluzak**
DEPUTY

2009 MAR 31 P 3:59

Attorneys for the Securities Commissioner

IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF MONTANA
LEWIS AND CLARK COUNTY

STATE AUDITOR, EX OFFICIO SECURITIES)
COMMISSIONER FOR MONTANA,)
Petitioner,)

Cause No. CDV-2009-157

vs.)

MEMORANDUM IN SUPPORT OF
MOTION TO APPOINT RECEIVER

KEITH KOVICK, individually and in his capacity)
as agent for the named respondent companies;)
ROBERT CONGDON, individually and in his)
capacity as agent for the named respondent)
companies; DAN WOLSKY, individually and in)
his capacity as agent for the named respondent)
companies; DAN KLEMANN, individually and in)
his capacity as agent for the named respondent)
companies;)

CORNERSTONE FINANCIAL CORPORATION)
13 2nd Ave, Polson, MT, 59860)

D & D MANAGEMENT and PROPERTY)
DEVELOPMENT, INC.)
466 Misty Vale Lane, Corvallis, MT 59828)

Respondents.)

The Montana State Auditor, acting in her capacity as Securities Commissioner (hereafter "Commissioner"), by and through John Mudd and Roberta Cross Guns, Special Assistant Attorneys General, respectfully submits her Memorandum in Support of her motion to appoint a receiver.

INTRODUCTION

On or about February 25, 2009, the Montana State Auditor, acting in her capacity as Securities Commissioner (hereinafter the "Commissioner"), filed a Petition for Injunctive Relief before this Court alleging violations of the Montana Securities Act (hereinafter the "Act"), and requesting that this Court issue a temporary restraining order and preliminary injunction. The factual allegations in support of the Commissioner's Petition indicate Montana investors may have lost substantial sums of money due to the named Respondents' fraudulent acts. Additionally, the Commissioner alleges that the named Respondents may have substantial assets that may be combined to repay the money investors lost as a result of fraud by the Respondents.

LAW AND ARGUMENT

The Act allows for the appointment of a receiver in cases where the Commissioner seeks an injunction from the district court pursuant to § 30-10-305, (1) (b), MCA. The statute provides that "a receiver or conservator may be appointed for the defendant or the defendant's assets." In this case, the Commissioner seeks the appointment of a receiver for the Respondents' (defendants') assets to preserve and protect these assets for two specific reasons: protection of the assets from disposition or encumbrance so they may be used to make defrauded investors whole, and to ensure none of the assets will be used to further other frauds that may be perpetrated by the Respondents. Because there are large numbers of assets with complicated ownership interests, justice is best served by appointing a disinterested and impartial receiver to

control the assets during the pendency of this proceeding and any administrative proceedings involving the same parties.

Montana Canons of Judicial Ethics allow for judges to act as trustees or other fiduciaries so long as there is no potential for conflict of interest arising from his or her judicial office. The Commissioner contacted Judge Loren Tucker to discern whether he could act as a receiver in this matter, managing the assets enjoined from encumbrance or dispossession or damage for the protection of investor victims' claims. Judge Tucker indicated he would accept an appointment from this court to act in the capacity as a receiver, acting pursuant to the duties outlined below:

1. Take and keep possession of property owned by any of the Respondents or their interest in any property;
2. To receive rents and collect debts;
3. To make transfers as necessary;
4. To escrow any money generated from transfers or rents or other income,
and
5. Any other acts generally necessary to effect these duties and any other such acts respecting the property as the Court may authorize.


The complexity and amount of property owned or in which these respondents own an interest is of such a nature that a receiver is the proper resource for managing and protecting such assets.

CONCLUSION

For the reasons set forth herein and in conformity with Montana law, the Commissioner respectfully requests that this Court issue an order appointing a receiver and that the receiver be Judge Loren Tucker of the 5th Judicial District of Montana. Judge Tucker has indicated that he

would be willing to accept the appointment. Further, the Commissioner recommends the appointment of Judge Tucker as Receiver, on the terms set forth in this motion.

DATED this 31st day of March 2009.


John J. Mudd
Roberta Cross Guns
Special Assistant Attorneys General
Montana State Auditor's Office

CERTIFICATE OF SERVICE

I hereby certify the foregoing Motion was served by US mail, first-class postage paid, to the following:

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